STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 99-155

January 20, 2000

CENTRAL MAINE POWER COMPANY
Annual Price Change Pursuant
to the Alternative Rate Plan

ORDER ON CMP's
MOTION FOR
RECONSIDERATION

I. INTRODUCTION

On August 20, 1999, CMP filed a Motion for Reconsideration asking us to reconsider our Order on Issue of Proceeds from Sales of CMP Easements to Gas Pipeline Companies of August 2, 1999. In that Order, we allocated 90% of the proceeds from these sales to ratepayers and 10% to shareholders. We further determined that the ratepayer portion of these proceeds should be amortized over a 5-year period beginning at the closing of each transaction. The issue involved sales of rights of way to Portland Natural Gas Transmission System (PNGTS) and Maritimes and Northeast Pipeline, L.L.C. (Maritimes). The sales to Maritimes included rights of way over MEPCO-owned corridors.[1]

CMP argues, among other things, that this Commission is preempted from allocating CMP's share of the gains from the sale of MEPCO's rights of way because MEPCO is a FERC-regulated entity and FERC's accounting rules require gains on sales of land to be accounted for below the line. After a conference of counsel and a briefing order issued by the Hearing Examiner, both CMP and the Public Advocate filed briefs and reply briefs. For the reasons set forth below, we conclude that this Commission is not preempted from determining how CMP's share of the gains should be allocated for retail ratemaking purposes. We also address below CMP's other issues raised in its Motion for Reconsideration.

II. PUBLIC ADVOCATE'S MOTION TO STRIKE

The Public Advocate asks that we strike a certain section of CMP's reply brief or provide it an opportunity to respond to CMP's argument. The Public Advocate argues that CMP raises a new argument in its reply. The Public Advocate also objects to CMP's "inappropriate tactic of distorting and mischaracterizing statements and positions taken by the Public Advocate in order to make it easier to refute them." Public Advocate's Corrected Objection and Motion to Strike Portions of CMP's Reply Brief of October 22.

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[1] The proceeds from the easement sales attributable to the MEPCO-owned land are more than 1/3 of the total proceeds from both the right of way transactions. *See* Motion for Reconsideration and/or Clarification (Confidential) at 2.

We deny the Public Advocate's Motion to Strike. Although the section at issue does go beyond the scope of the specific preemption arguments which were to be the subject of the briefs, CMP's reply arguably responded to the Public Advocate's citation to a number of cases supporting the risk/burden rationale in our original order. Thus, we will not strike the section at issue. We do not take any action on the Public Advocate's objection to CMP's characterization of the Public Advocate's argument. It appears that the Public Advocate's objection is primarily to the style of CMP's brief. While we prefer a briefing style that is less antagonistic, the choice of style is for the drafter of the brief to determine.

III. BACKGROUND

A. FERC's Accounting Rules

Under FERC's accounting rules, gains or losses on the sale of land are accounted for "below the line" in accounts 421.1 or 421.2 respectively. If a regulatory agency such as this Commission determines that a gain is to be accounted for above the line, that gain would be entered in account 254 (other regulatory liabilities). 18 CFR Part 101, account 254(A).

B. CMP's Investment in MEPCO

CMP accounts for its investment in MEPCO under the equity accounting method, and in virtually all past rate case proceedings, the revenue requirement for CMP's retail ratepayers was determined using this method to recognize CMP's 78.2% ownership share of MEPCO. Any cash invested by CMP in MEPCO during the years of its ownership was debited to the "Equity Investment in Subsidiaries" account. At the end of each fiscal year, CMP's share of MEPCO's earnings (or losses) is included as a credit on CMP's income statement and as a debit to the Equity Investment account. Whenever MEPCO paid any dividends to CMP, the entry was a debit to CMP's cash account and a credit to the Equity Investment account, because CMP was receiving a partial return of its investment in its subsidiary. Thus, CMP's investment in MEPCO was reflected on its financial statements like any other investment that CMP might make and for which CMP owned a controlling interest. Tr. C 15-21.

For ratemaking purposes, CMP's test year equity investment in MEPCO, adjusted for any known and measurable changes, has always been included in its rate base calculation, and thus CMP's ratepayers paid for the MEPCO investment at CMP's overall allowed rate of return as established by this Commission. Tr. C 13-15. Concurrently, CMP's share of MEPCO's earnings during the test year, also as adjusted for known and measurable changes, was included as an offset to CMP's revenue requirement. This earnings synchronization adjustment has the effect of changing the FERC-allowed rate of return (ROR) on MEPCO to the PUC-allowed ROR for the purpose of setting retail rates in Maine. CMP's share of the net MEPCO revenues and expenses are reflected on CMP's

income statement as earnings in its subsidiary, a procedure which has the effect of consolidating MEPCO with CMP on a one-line consolidated basis.[2]

IV. THE PARTIES' ARGUMENTS

CMP argues that because the FERC accounting rules provide for gains from the sale or lease of land to be accounted for below the line, this Commission is preempted from allocating a portion of CMP's share of the gain from its investment in MEPCO to ratepayers. CMP further argues that because the gain is not reflected in MEPCO's open access transmission tariff (OATT), the gain cannot be allocated to CMP's ratepayers. In addition, CMP argues that by virtue of the accounting rules, CMP's ratepayers do not bear any of the risks of loss on CMP's investment in MEPCO. Finally, CMP argues that, for investments in wholesale utilities, shareholders historically have borne the risk of losses on the sale of land.[3] In its August 20, 1999 Motion for Reconsideration, CMP also asks that we defer the actual calculation of the effect of our order until Docket No. 97-580 is finalized and that we reconsider our decision on carrying costs.

The Public Advocate argues that neither FERC's accounting rules nor MEPCO's OATT should prevent the Commission from allocating CMP's portion of the gain to CMP's ratepayers. He also argues that historically ratepayers have borne the risk of loss and the burdens on utilities' investments in wholesale utilities. Finally, he argues that we should reconsider our 10% allocation of the gain on the sale of rights of way to shareholders because there is no reasonable basis for providing an incentive to CMP to negotiate the best price in future dealings concerning rights of way.

V. DISCUSSION

A. Preemption

CMP argues that this Commission is preempted from allocating CMP's share of the gain to CMP's ratepayers because MEPCO's OATT does not reflect an

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[2]CMP states that items that FERC indicates should be accounted for below-the line were removed from the calculations of net MEPCO revenues and expenses. CMP Brief, Dumais Affidavit at 3. We note however, that in response to an oral data request from the Bench, CMP stated that "CMPCO's 78.3% portion of the MEPCO gain or **[$ Confidential]**, would be reported on an after-tax basis as equity earnings in financial statements." ODR-07 (Confidential).

[3]We note that CMP's preemption arguments are inconsistent with its request in Docket No. 98-079 that this Commission approve MEPCO's application to sell easements to Maritimes and its stipulation in that case that ratemaking treatment of the proceeds of the sale of easements would be reserved for future proceedings. *See Central Maine Power Company, Request For Approval of Transfer of Assets*, Docket No. 98-079, Order at 2 (July 14, 1998).

offset for the gain. According to CMP, "FERC has decided that MEPCO shareholders bear risks of loss and gain as to transmission rights of way. As a result, these costs and gains are not flowed through in MEPCO's wholesale rates." CMP Brief at 8. Thus, CMP argues, if we allocate the gain to CMP's ratepayers, we would effectively be lowering MEPCO's filed rate in violation of the filed rate doctrine.

We begin our analysis by acknowledging the well-accepted principle that "preemption is not to be presumed lightly." *Maine Yankee Atomic Power Company v. Maine Public Utilities Commission*, 581 A.2d 799, 801 (Me. 1990). With that principle in mind, we consider the preemption arguments raised by CMP.

The Federal Power Act designated the Federal Energy Regulatory Commission (FERC) (previously known as the Federal Power Commission) as the agency with authority over wholesale sales of electricity and transmission of electric energy in interstate commerce. 16 U.S.C. § 824(b)(i). Because the FERC has exclusive authority to determine the reasonableness of the wholesale rate, a state commission may not determine that the seller's rate is unreasonable. *Federal Power Commission v. Southern California Edison Co.,* 376 U.S. 205, 214-215 (1964). The filed rate doctrine, therefore, prohibits a state commission from examining the reasonableness of a wholesale seller's rate that has been approved by the FERC. *Nantahala Power and Light Co. v. Thornberg,* 476 U.S. 953, 963 (1986).[4]

First, we agree with the Public Advocate that there is no FERC action yet taken on the treatment of the rights of way.[5] However, we also agree with CMP that the absence of FERC action is not dispositive if the FPA allocates authority to the FERC over the action sought to be taken by the state commission. *No Tanks, Inc. v. Public Utilities Commission,* 697 A.2d 1313 (Me. 1997). We also agree with CMP that the FERC has exclusive authority to set MEPCO's rate.

By contrast, FERC does not have authority over the allocation in a retail ratemaking proceeding of gains received by a utility from its investment in a FERC-regulated utility. FERC's authority does not extend to the setting of retail rates for CMP. The allocation of revenues for the purposes of retail ratemaking is an area clearly within the jurisdiction of state utility commissions. 16 U.S.C. § 824(a).

Moreover, the FERC has explicitly stated that state regulatory agencies may take certain actions to require retail stranded cost mitigation for retail ratemaking

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[4] For a thorough discussion of preemption and the effect of the filed rate doctrine, s*ee Central Maine Power Company, the Federal Power Act, Petition For Certificate of Public Convenience and Necessity for Significant Agreement or Contract with Houlton Water Company,* Docket No. 94-475, Order (March 30, 1995).

[5] The acceptance of MEPCO's OATT preceded the sale of the MEPCO rights of way. Tr. C at 5.

purposes even if these actions are inconsistent with the FERC's accounting policies. Thus, in *Ohio Edison,* 84 FERC ¶ 61,157 at 61,858, (1998) the FERC denied utilities' requests to include in recorded depreciation, for accounting purposes only, the effects of retail stranded cost mitigation measures implemented with the approval of state regulators for retail ratemaking purposes. In its order, the FERC emphasized that its denial "does not affect the actions of the various state regulators in approving the acceleration, deceleration and shifting of depreciation expense for retail purposes." The FERC further noted that "state regulators, if authorized by state law, are free to require utilities to keep separate sets of books for retail ratemaking purposes." *Id.,* n.1.[6]

At least one state commission has rejected a preemption argument very similar to the one made by CMP. In *Re: Detroit Edison Company*, 194 PUR 4th 70 (Michigan PSC, May 11, 1999), the Michigan Public Service Commission rejected Detroit Edison's argument that its wholesale interconnection revenues should no longer offset the utility's retail power supply cost recovery expenses because the FERC in

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[6] We also take note of the fact that account 254 of FERC's Uniform System of Accounts envisions different accounting and ratemaking treatments by the state commissions. This section states (in relevant part):

> This account shall include the amounts of regulatory liabilities, not includible in other accounts, imposed on the utility by the ratemaking actions of *regulatory agencies*. (*See* Definition No. 30.)

18 C.F.R. Part 101 account 254 (emphasis added). Section 30 defines regulatory assets and liabilities as:

> assets and liabilities that result from rate actions of *regulatory agencies*. Regulatory assets and liabilities arise from specific revenues, expenses, gains, or loses that would have been included in net income determination in one period under the general requirements of the Uniform System of Accounts but for it being probable:
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> A. that such items will be included in a different period(s) for purposes of developing the rates the utility is authorized to charge for its utility services; or
>
> B. in the case of regulatory liabilities, that refunds to customers, not provided for in other accounts, will be required.

18 C.F.R. Part 101, Definition No. 30 (emphasis added). These sections indicate that FERC is not the only regulatory agency that can make these determinations.

Order 888 changed the way utilities were required to account for such revenues. The Michigan Commission concluded that:

> nothing in FERC No. 888 usurps the Commission's jurisdiction over retail ratemaking. Indeed, as recognized by the FERC in *Ohio Edison*, FERC Order 888 does not affect the Commission's authority over Detroit Edison's retail rates. Indeed, the FERC specifically noted that "state regulators are free to require utilities to keep separate sets of books for retail ratemaking purposes."
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> *Because the FERC's accounting practices do not control the Commission's retail ratemaking decisions, the Commission finds that Detroit Edison's primary justification for refusing to adhere to the past practice of returning 100% of its interconnection revenues to power supply cost recovery customers has no merit.*

Detroit Edison, 194 PUR 4th at 73 (emphasis added).

In this case, CMP argues that this Commission may not exercise its jurisdiction to determine, for retail ratemaking purposes, the proper allocation of gains received by CMP as a result of its investment in MEPCO because of the existence of the FERC's accounting rules. We agree with the Michigan Public Service Commission and the FERC that the FERC's accounting rules do not control state retail ratemaking decisions.[7]

In fact, CMP has failed to distinguish the Commission's action in this case from the action it asks the Commission to take with regard to earnings synchronization for CMP's investment in Connecticut Yankee in Docket No. 97-580. In that case, CMP objected to the Advisors' proposal that no earnings synchronization should be performed if the FERC adjusted Connecticut Yankee's return on equity due to imprudence. CMP stated that "[g]iven the historical practice of this Commission, providing the MPUC-allowed return on nuclear investments, the Advisors' recommendation should be rejected." CMP's Comments in Response to Intervenor Testimony and Bench Analysis at 49, Docket No. 97-580 (Phase II), (October 12, 1999). CMP further stated in that case that even though FERC sets rates for Maine Yankee, Connecticut Yankee, Yankee Atomic and MEPCO, the Commission should ignore the FERC's rate of return and set a rate of return for retail rates. CMP asserted that the Commission may set a different rate of return, because "[FERC] set[s] the rates that [the utilities selling at wholesale] bill CMP as a customer; but the PUC regulates our price and one component of our cost of

[7] We also note another instance where our retail ratemaking requirements diverge from FERC's accounting requirements. Chapter 83 of our rules requires political contributions be accounted for below the line while FERC's accounting rules allow these expenses to be accounted for above the line. *See* 18 CFR § Part 101, account 900.2.

service is our investment in these companies." Tr. DDD at 57, Dumais, Docket No. 97-580. We conclude that the allocation of revenues received by CMP as a result of CMP's investment in MEPCO, which has been included in retail ratebase through equity investment accounting, is also a component of CMP's cost of service over which this Commission has jurisdiction.

We further conclude that CMP's view that "[t]he filed rate doctrine stands for the proposition that a state public utilities commission must flow-through to retail customers any cost found legitimate by FERC in setting wholesale rates," CMP Brief at 7-8, misconstrues the effect of the filed rate doctrine. We find that neither case law nor Commission practice supports this statement.

In *Pike County Light & Power Co. v. Pennsylvania Public Utilities Commission,* 465 A.2d 735 (Pa Cmmw. 1983), the Pennsylvania court held that the state commission was not preempted from determining whether it was prudent for the wholesale purchasing utility to incur a cost that the FERC had determined was a just and reasonable rate for the wholesale utility to charge. Because FERC does not have exclusive authority to inquire into the prudence of the purchasing utility, the state commission remains free to disallow a portion of a utility's wholesale purchase expense as imprudent, even though a seller's rate may have been just and reasonable for the seller.[8] Under *Pike County,* therefore, a state commission is *not* required to flow-through to retail customers any cost found legitimate by FERC in setting wholesale rates. It may not determine that the costs of the wholesale seller, approved and included in the FERC-approved rate, were not reasonable for the wholesale *seller* to incur. However, it may make a determination within its own sphere of regulation, which may prevent those costs from being flowed through to retail customers.

Thus, as CMP recognizes, this Commission may decide that, as part of determining CMP's cost of service, CMP's return on equity on its investment in wholesale utilities such as MEPCO or Maine Yankee should be higher or lower than the FERC determined cost of equity. Tr. C at 11. Through the process of earnings synchronization, CMP's return on equity and hence its rate of return on its investments in wholesale utilities has been set by this Commission. *Id.* at 8, 11. However, if MEPCO's or Connecticut Yankee's FERC-allowed cost of equity had to be passed through to CMP's retail ratepayers, this Commission would not have the authority to increase or decrease the rate of return determined by FERC. Even CMP does not propose that our jurisdiction is so

[8] In a recent case, the Eighth Circuit Court of Appeals found that FERC acted beyond the scope of its jurisdiction when it required a utility to curtail electric transmission on a comparable and non-discriminatory basis when the effect of the Order was to regulate curtailment of electric power to the utility's retail customers. *Northern States Power Co. v. FERC,* 176 F.3rd 1090 (8th Cir. 1999). CMP's argument would similarly place the FERC in the position of regulating CMP's retail rates.

restricted. To the contrary, as discussed above, it argues in Docket No. 97-580 that this Commission should exercise its authority to engage in earnings synchronization.[9]

In addition, we disagree with CMP's analysis that the Commission action indirectly results in a determination that MEPCO's OATT is unjust or unreasonable. This Commission is not questioning directly or indirectly the reasonableness of the MEPCO's OATT. It is only making a determination about the proper allocation of revenues received as a result of CMP's investment in MEPCO.

Reduced to its simplest terms, the MEPCO right of way sale involves two separate components. The first is the sale by MEPCO of the right of way. The proceeds from this transaction flow to *MEPCO shareholders*, including CMP, in accordance with FERC's accounting rules (unless otherwise ordered by FERC in the context of setting the wholesale rate). The second component is the allocation between *CMP's shareholders* and ratepayers of the proceeds received by CMP as a MEPCO shareholder, in the form of a gain on its investment in MEPCO. It is this allocation, which has absolutely no effect on the wholesale rate charged by MEPCO, that falls within the jurisdiction of the MPUC.

B. Risk/Burden Analysis

CMP also argues that CMP ratepayers have not borne any of the risk of loss on MEPCO's land. In support of this argument, CMP points to *de minimis* losses that CMP has accounted for below the line. CMP also argues that because of the FERC accounting rules CMP ratepayers have never borne the risk of loss on land owned by a FERC-regulated utility. Finally, CMP argues that because CMP's ratepayers are not customers of MEPCO, they cannot bear any risk of loss. We are not persuaded by any of these arguments.

First, the below-the-line treatment of *de minimis* losses simply speaks to the size of the loss. We cannot consider CMP's below-the-line booking of a loss of

[9] In an earlier case, we found that we were not preempted from reviewing a wholesale contract from the seller's perspective as long as we did not review the reasonableness of the wholesale rate. *See, Central Maine Power Company, Petition for Certficate of Public Convenience and Necessity for Significant Agreement or Contract with Houlton Water Co.*, Docket No. 94-475, Order at 7 (March 30, 1995). We cited FERC cases acknowledging the state commission's role in retail rate setting even if the subject of their inquiry is also the subject of a FERC inquiry. See *Doswell Limited Partnership*, 110 P.U.R. 4th 261 (FERC, 1991) (recognizing state commission's jurisdiction to consider the issuance of a certificate of public convenience and necessity for an independent power producer construction project even though the facility would be used solely to supply electricity for resale); *Palisades Generating Company,* 48 FERC ¶61,144 (1989) (recognizing the state commission's jurisdiction to consider a proposed power purchase agreement between two affiliated entities). The point of these cases is that the filed rate doctrine should not be applied to require a blanket finding of preemption whenever there is a FERC-approved rate in effect.

$138 in 1993 or $1,040 loss in 1996 for a company with annual revenues (in 1996) in excess of $955 million and operating income of $102 million as evidence that shareholders have historically borne the risk of loss. No historical significance can be attached to CMP's unilateral below-the-line treatment of these *de minimis* losses.

The absence of any significant losses relating to MEPCO's rights of way could also support a conclusion that there is no risk of substantial loss as to the rights of way. In such a case, we look to the burdens carried by CMP ratepayers. As discussed above, CMP's investment in MEPCO, including the purchase of land, is in CMP's rate base and ratepayers have paid costs associated with the maintenance of the rights of way. Tr. C at 13-21. In addition, CMP concedes that if there were environmental contamination on land owned by a wholesale entity in which CMP has an investment, CMP ratepayers would be at risk for paying the clean up costs if the costs were incurred in serving those ratepayers. *Id.* at 21. Moreover, we note that CMP stops short of stating in its brief that it would not request relief for a loss on its investment in a wholesale utility-owned asset. Given Maine ratepayers' payment of losses on CMP's investment in Seabrook and Maine Yankee, such a claim would be difficult to support.

Second, we reject CMP's claim that ratepayers have not borne the risk of losses on investments in other FERC-regulated entities. For example, the recently resolved cases at FERC involving Maine Yankee's prudence in operating the Maine Yankee plant and eventually deciding to shut it down make clear that retail ratepayers are at risk for Maine Yankee's prudently incurred costs even when the plant is no longer providing service. This Commission and the Maine Public Advocate were parties in these cases because Maine retail ratepayers would be responsible for prudently incurred Maine Yankee costs *even though Maine Yankee had shut down.* See 83 FERC ¶ 61,122 (consolidating Maine Public Advocate's complaint against Maine Yankee with an investigation into Maine Yankee's rate filing relating to its decision to shut down and the prudence of this decision).[10] *See also* 82 FERC ¶ 61,010 *(*setting for hearing Maine Yankee's proposed increase in rates of approximately $21.5 million reflecting additional costs associated with the decision to shut down Maine Yankee)[11]

Along these lines, in Docket No. 97-580, we unequivocally stated that CMP's ratepayers are at risk for paying stranded costs such as prudent and reasonable decommissioning costs in nuclear plants that sell at wholesale.

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[10] The FERC stated in this Order that both the Public Advocate and this Commission noted that costs at issue in these cases would be passed on to the Maine retail customers of the Maine Yankee owners (such as CMP). 83 FERC ¶ 61,122 at 61,559.

[11] This case was resolved by a settlement agreement to which this Commission was a party. Under the Settlement Agreement, CMP's ratepayers will continue to pay a return on CMP's investment in Maine Yankee including Maine Yankee's investment in land. The Settlement Agreement was approved by the FERC by a Letter Order, issued on June 1, 1999. 87 FERC 61,252 (1999).

> Prudent and reasonable decommissioning costs are legitimate costs of operating (or having operated) a nuclear power plant. As such, the prudent and reasonable expenses should be recovered from T&D ratepayers as stranded costs. The bulk of the decommissioning expenses are for plants that are regulated by FERC, and consequently FERC will decide the prudence and reasonableness of those decommissioning expenses.

Public Utilities Commission, Investigation of Central Maine Power Company's Stranded Costs, Transmission and Distribution Utility Revenue Requirements, and Rate Design, Docket No. 97-580, Order at 101 (March 19, 1999). We further noted that shut down plants in which CMP owns a share include Maine Yankee, Connecticut Yankee and Yankee Atomic and that CMP owns a share in Vermont Yankee, which continues to operate. In accordance with our Order in 97-580, CMP's retail ratepayers will continue to be at risk for stranded costs associated with these plants.

We also reject CMP's argument that CMP's ratepayers cannot be at risk for losses or bear the burden of CMP's investment in MEPCO because they are not direct customers of MEPCO. If this were the test for allocating risks, Maine ratepayers would not be responsible for any of the utility losses in Maine Yankee. The language in *Maine Water Co. v. PUC,* 412 A.2d 443 (Me. 1984) upon which CMP relies is simply inapplicable to this case. As discussed in our original order, in *Maine Water* the customers of the remaining divisions did not pay any of the costs of the sold divisions. This simply is not the case with respect to CMP's ratepayer's payment of costs relating to MEPCO, Maine Yankee, Connecticut Yankee or Yankee Atomic.[12]

Finally, our decision in this matter is not based on the theory that ratepayer's must have an "equitable" ownership in the assets, but rather on the risk/burden analysis of *Democratic Central Committee v. Washington Metropolitan Transit District,* 485 F.2d 786 (D.C. Cir. 1973). Thus, our focus is not on whether ratepayers or shareholders *own* the assets, but which entity has borne the risk of loss or carried the burdens associated with the asset. As we stated in our original order, the theory that shareholders, as the owners of utility assets, are entitled to the gain on these assets is inconsistent with original cost valuation because the theory results in a conclusion that shareholders are entitled to a return on (and of) the fair market value of an asset rather than its original cost. As noted in *Democratic Central*, however, "the investor's interest lies in the integrity of his investment and a fair opportunity for a reasonable return thereon." *Id.*, at 806. Thus, investors are not entitled to a return on the fair value of rate base, and they "do not possess a vested right in value-appreciations accruing to in-service utility assets." *Id.* at 804. As discussed in our original order, we engage in a risk/burden analysis since neither shareholders nor

[12]We note CMP's claim that CMP ratepayers did not pay for CMP's original investment in MEPCO. Dumais Affidavit ¶ 10. We assume that this statement is not intended to be inconsistent with CMP's acknowledgement that CMP's ratepayers have historically paid a return on CMP's investment in MEPCO including the purchase of the MEPCO-owned rights of way. Tr. C at 15-16.

ratepayers are *automatically* entitled to gains realized from utility investments. Where ratepayers bear the risk of loss or shoulder burdens associated with the investments, as is the case here, they are entitled to the gain on the investment. Such an analysis yields an entirely different outcome with respect to CMP's lucrative investment in its New England Optical Network (NEON) telecommunications affiliate. Because this investment is not included in rate base and ratepayers do not pay costs associated with CMP's telecommunications ventures, CMP's shareholders are entitled to the profits from this enterprise.[13]

C. Affiliate Relationship

Finally, CMP argues that allocating CMP's share of the gain from the sale of MEPCO improperly pierces the corporate veil between MEPCO and CMP. This argument is without merit. As stated earlier, this Commission is determining how to treat revenues received by CMP as part of its investment in MEPCO. Thus, there is simply no basis for the argument that we are treating these two corporations as if they were fungible.[14]

D. Allocation to Shareholders of 10% of the Gain from the Rights of Way Sales

The Public Advocate asks that we reconsider allocating 10% of the proceeds from the rights of way sales to shareholders. The Public Advocate argues that the 10% allocation is inappropriate because it is unlikely that there will be any other non-affiliate transactions for CMP's rights of way and because Chapter 820 addresses rights of way transactions involving affiliates. CMP responds that this reconsideration request is not properly before us since the Public Advocate did not file a motion for reconsideration.

We decline to reconsider our allocation to shareholders of 10% of the gain from the rights of way sales. We note that we could reconsider this matter on our own motion even if the Public Advocate's request for reconsideration is not timely. 35-A M.R.S.A. § 1321. However, we do not agree that similar sales transactions are unlikely to occur. The development of a competitive market for gas service may well lead to interest in using CMP's rights of way by other unaffiliated entities seeking to develop gas projects.

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[13] We also reject CMP's contention that shareholders are entitled to retain the gain on the sales of the rights of way because service to CMP ratepayers is not changed as a result of the sale. This argument fails to address the fact that ratepayers have borne the risk of loss and carried burdens associated with the rights of way.

[14] We do note with interest, however, that CMP's own actions reflect its close relationship to MEPCO. For example, in Docket No. 98-079, Central Maine Power Company's attorney signed the stipulation on behalf of both CMP and MEPCO. We also note that in response to an oral data request for the revenues *CMP* recorded in 1999 for the sale of easements to gas companies, CMP responded by indicating the amount of both CMP's gain from its sale of right of ways along its own transmission corridors and its share of the MEPCO gain. ODR-07 (Confidential).

See, e.g., *CMP Natural Gas, L.L.C., Petition for Approval to Furnish Gas Service in the Municipalities of Westbrook and Gorham,* Docket No. 99-477.

E. Other Issues Raised In CMP'S Motion For Reconsideration

CMP argues that we erred in calculating the amount of the proceeds to be retained by CMP because we did not take into account the taxes on the proceeds from the MEPCO sale. It does not request that we recalculate the amounts but requests that these numbers be finalized in Docket No. 97-580 in which CMP's rates will be established for the period beginning March 1, 2000. We agree with the request to finalize the numbers in Docket No. 97-580 and note that the calculations in our original order are intended for illustrative purposes only.

CMP also argues that CMP should not accrue carrying costs for proceeds retained prior to March 1, 2000 when rates become effective. We agree that CMP should not accrue the carrying costs on the unrecovered balance since we have ordered the company to begin amortizing the gain and essentially have put the amortization and balances into rates. Accordingly, we revise our order to remove the carrying cost requirement.[15]

[15] In its Exceptions, CMP reiterated its argument made prior to the issuance of the original Order in this case that this Commission is prohibited by the operation of CMP's Alternate Rate Plan (ARP) from determining the timing of the recovery of a gain from the sale of land. This argument should have been made in CMP's briefs not in its exceptions. However, even if this argument were properly included in CMP's briefs on reconsideration, we would reiterate our earlier conclusion that we may determine during the operation of an ARP the timing for recovery of non-recurring revenues such as the gain at issue here as we did for the 1998 ice storm costs.

VI. CONCLUSION

Based on the discussion above, we deny that portion of CMP's Motion for Reconsideration and for Clarification that relates to treatment of the proceeds from CMP's share of the proceeds of the sale of MEPCO's rights of way to Maritimes. We clarify that calculations of the actual ratemaking effect of our order will occur in Docket No. 97-580. Finally, we reconsider that portion of our decision relating to carrying costs.

Dated at Augusta, Maine, this 20th day of January, 2000.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.